

**International Brotherhood of Electrical Workers,  
Local 125, AFL-CIO and International Union  
of Operating Engineers, Local 701, AFL-CIO  
and Loy Clark Pipeline Company**

**International Union of Operating Engineers, Local  
701, AFL-CIO and Loy Clark Pipeline Com-  
pany.** Cases 36-CD-207 and 36-CD-209

October 22, 1997

**DECISION AND DETERMINATION OF  
DISPUTE**

**BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS**

On April 8, 1997,<sup>1</sup> International Union of Operating Engineers, Local 701, AFL-CIO (Local 701) filed a charge in this Section 10(k) proceeding against International Brotherhood of Electrical Workers, Local 125, AFL-CIO (Local 125), alleging that Local 125 violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activities with an object of forcing the Employer, Loy Clark Pipeline Company, to assign certain work to employees represented by Local 125 rather than to employees represented by Local 701. On May 2, 1997, Loy Clark Pipeline Company (the Employer) filed a charge in this proceeding against Local 701, alleging that it violated Section 8(b)(4)(D) of the Act by engaging in proscribed activities with an object of forcing it to continue to assign certain work to employees represented by Local 701 rather than to employees represented by another union. The hearing was held on June 3 and 4, before Hearing Officer Leora Watkins.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

The parties stipulated that the Employer, an Oregon corporation, is engaged in the business of utility contracting with its principal office in Beaverton, Oregon, where during the past year, a representative period, it received revenues in excess of \$50,000 for services performed directly for customers outside the State of Oregon. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The parties stipulated, and we find, that International Brotherhood of Electrical Workers, Local 125, AFL-CIO, and International Union of Operating Engineers, Local 701, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

The Employer provides a broad range of support services necessary in utility construction work, such as paving, saw cutting, concrete work, asphalt paving, drilling, and equipment rental. To accomplish these various jobs, it employs approximately 225 employees, including teamsters, laborers, and steamfitters-plumbers in addition to operating engineers and electricians. The Employer is party to several collective-bargaining agreements, including a building and trades agreement, a mainline agreement, and a distribution agreement covering work done by these various crafts.

The Employer performed some jobs under "off-the-dock" contracts with public utilities, including Portland General Electric (PGE), whereby it would provide manpower and equipment as needed to supplement the utilities' own work crews to complete a particular task. The Employer's president, Clark, testified that when requested to provide such services he would decide which craft and type of equipment to dispatch to best fulfill the "off-the-dock" work order.

In early February, the Employer was asked to provide "off-the-dock" excavation services at a PGE job. When the Employer's Local 701-represented operating engineer arrived at the site, however, a Local 125 foreman refused to allow him to perform the work because he did not possess a Local 125 card. Local 125 Business Manager Bill Miller thereafter told Clark that by sending a non-Local 125-represented employee to do the work, he had "upset the apple cart" and that there were going to be a lot of problems. Later in February, another Local 701 operating engineer was also denied permission to perform work at a PGE-job location. Miller told Clark that by sending the wrong people to these worksites, the Employer was not honoring its agreements and that he would so inform other employers (utilities) with which Loy Clark sought to do business. Miller stated further that he would tell such employers that Loy Clark was no longer in compliance with its collective-bargaining agreement with Local 125. Thereafter, Miller advised Clark that the situation could be resolved if the Local 701 operators also held a Local 125 card, i.e., became Local 125 members. In a series of letters and conversations, the Employer and Local 125 attempted to work out the mechanics of such dual membership. By letter dated April 9, Local 701 notified the Employer that it would not passively allow its membership and work to be stolen and planned to take a variety of steps, including "appropriate economic action against the Company" to force it to comply with its obligations to Local 701.

<sup>1</sup> Dates refer to 1997 unless otherwise indicated.

### B. *Work in Dispute*

The disputed work involves the digging, placement of fill, and backfilling of trenches in the public utility easements related to the underground installation of electric power lines and electric power vaults for Portland General Electric and other utility companies.

### C. *Contentions of the Parties*

The Employer placed in the record evidence establishing that Respondent Local 125 violated Section 8(b)(4)(D) of the Act by threatening, in writing and in conversation, to take actions which would result in the Employer's losing business unless it used Local 125-represented employees to perform the work in dispute. The Employer also presented evidence in support of its contention that Respondent Local 701 violated Section 8(b)(4)(D) of the Act by threatening to engage in "appropriate economic action" against the Employer if it reassigned the disputed work away from employees it represented. The Employer's president, Clark, testified that the assignment of the disputed work to employees represented by Local 701 was in conformance with its long-established past practice as well as with its collective-bargaining agreement with Local 701, and was more efficient and economically sound than assigning the work to Local 125-represented employees.

At the end of the second day of the hearing in this proceeding, counsel for Local 125 stated on the record that the parties had engaged in off-the-record discussions and agreements which resulted in Local 125 "agree[ing] that Loy Clark . . . can assign the work that is described in the Notice of Hearing to the International Union of Operating Engineers, Local #701. And IBEW Local #125 will not dispute the assignment of that work to the operating engineers, [or] threaten Loy Clark Pipeline for assigning that work to the operating engineers . . . ."

In addition, in response to the hearing officer's recitation of the understanding which had been reached, all parties stated on the record that they expected that the Board would award the disputed work to employees represented by Local 701. The parties waived the filing of briefs.

### D. *Applicability of the Statute*

Before the Board may proceed with a determination pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As stated above, unrefuted testimony and documentary evidence was presented at the hearing establishing that Respondent Local 125 sought to have the disputed work reassigned to employees it represented, and that it warned the Employer that by giving the work to

Local 701-represented employees, there were going to be a lot of "problems." It is also unrefuted that Local 701 notified the Employer that if it lost the disputed work, it would take unspecified "economic action" against the Employer in furtherance of the interests of the employees it represented in obtaining the work.

We find reasonable cause to believe that violations of Section 8(b)(4)(D) have occurred and that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act.

### E. *Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of the disputed work after giving due consideration to various relevant factors. As the Board has frequently stated, the determination in a jurisdictional dispute case is an act of judgment based on common sense and experience in weighing these factors. The following factors are relevant in making a determination of the dispute before us.

#### 1. Board certification and relevant collective-bargaining agreements

The parties stipulated at the hearing that there is no outstanding Board certification relevant to the work involved in this proceeding of either International Brotherhood of Electrical Workers, Local 125, AFL-CIO, or International Union of Operating Engineers, Local 701, AFL-CIO.

The Employer is party to collective-bargaining agreements with both Local 701 and Local 125. As a member of the Distribution Contractors Association, the Employer is party to the National Distribution and Utilities and Maintenance Agreement with International Union of Operating Engineers, with which Local 701 is affiliated. That agreement covers, *inter alia*, the "repair, maintenance, construction, installation, treating and reconditioning of pipeline systems . . . as well as cable, conduit, telephone lines, power lines, . . . commonly referred to as 'distribution or utility work,' defined as follows: generally speaking, from the first metering station, connection similar or related facility, at which point mainline pipeline or cable construction ceases." Through its affiliation with the Northwest Line Constructors Chapter of the National Electrical Contractors Association, the Employer is also party to a collective-bargaining agreement with Local 125 covering, *inter alia*, "electrical underground construction work" including "not only new installation work but shall also govern the repair, maintenance, . . . the handling and operating of all equipment used . . . on the job site . . . ." As each labor organization has a collective-bargaining agreement with the Employer which arguably supports its claim

to the work in dispute, this factor does not favor either of the competing unions.

## 2. Employer preference and past practice

The Employer's president, Clark, testified that the Employer prefers that employees represented by Local 701 perform the disputed work, in accordance with its original assignment. He also testified that the Employer has historically performed this type and similar work on jobsites in the area using Local 701-represented employees. Accordingly, we find that the factor of employer preference and past practice favors an award of the disputed work to employees represented by Local 701.

## 3. Area and industry practice

William H. Moe, owner of W.G. Moe & Sons, a general excavating contracting company, as well as the president of the Oregon/Southwest Washington branch of the Associated General Contractors, testified that throughout his 30 years in the business, his company has performed work of the same type as that in dispute for area utility companies using Local 701-represented employees. Respondent Local 125 presented no countervailing evidence. Thus, this factor favors an award of the disputed work to employees represented by Local 701.

## 4. Relative skills

The Employer presented evidence that Local 701-represented employees possess the skills required to perform the work in dispute and that the Employer and the contractors for whom the work was being performed have been satisfied with the employees' performance. Local 125 presented no affirmative evidence regarding the relative skills of the employees it represents. Accordingly, this factor favors an award of the disputed work to employees represented by Local 701.

## 5. Economy and efficiency of operations

Clark testified that it is more efficient and economical to use employees represented by Local 701 than Local 125-represented employees to perform the work in dispute. Noting the Local 701-represented employees' greater familiarity and experience related to the operation of the equipment involved in the performance of the disputed work, the Employer stated that it could accomplish the job more expeditiously by using employees represented by Local 701.

Based on the testimony presented, we find that this factor favors awarding the disputed work to Local 701-represented employees.

## Conclusion

Upon the record as a whole, and after consideration of all the relevant factors involved, we conclude that the Employer's employees who are represented by International Union of Operating Engineers, Local 701, AFL-CIO are entitled to perform the work in dispute. We reach this conclusion based on the Employer's assignment, preference, past practice, area practice, and economy and efficiency of operations. In addition, we rely on the parties' record statements essentially consenting to the Board entering an award of the work in this manner. In making this determination, we are awarding the work in question to employees who are represented by International Union of Operating Engineers, Local 701, AFL-CIO, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

## DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Loy Clark Pipeline Company who are represented by International Union of Operating Engineers, Local 701, AFL-CIO are entitled to perform the work of digging, placement of fill, and backfilling of trenches in the public utility easements related to the underground installation of electric power lines and electric power vaults for Portland General Electric and other utility companies.

2. International Brotherhood of Electrical Workers, Local 125, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Loy Clark Pipeline Company to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, International Brotherhood of Electrical Workers, Local 125, AFL-CIO shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring Loy Clark Pipeline Company, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.